

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 08/01/1988	NUMBER 03.01.102
SUBJECT HABITUAL OFFENDERS		SUPERSEDES PD-DWA-45.14	
		AUTHORITY MCLA 769.10-769.12; 791.233b; 791.234; 800.33; Lamb v MI Parole Board, 106 Mich App 175 (1981); Trudeau v Oakland County Circuit Judge, 78 Mich App 111 (1978).	
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POLICY STATEMENT:

To define habitual offenders, explain computation of release dates, and identify eligibility for parole and community residential programs (CRP).

DEFINITIONS:

Habitual Offender - A prisoner who is serving a sentence under the Habitual Offender Statutes, MCLA 769.10, 769.11, 769.12.

Proposal B Habitual Offender - An habitual offender whose underlying offense is a crime listed under Proposal B, MCLA 791.233b.

Non-Proposal B Habitual Offender - An habitual offender whose underlying offense is not a crime listed under Proposal B.

POLICY:

- A. In 1977, the Michigan court of Appeals decided a case known as the Trudeau case which changed the way the Department must treat habitual offenders. As a result, the minimum sentences of habitual offenders are treated differently than those of non-habitual offenders, although the maximum sentences are treated the same. As a result of Trudeau, there are two separate categories of habitual offenders:
 1. Habitual offenders who committed their offense prior to February 4, 1978. They may be paroled after the expiration of the Special Good Time (SGT) minimum without the approval of the sentence judge or his/her successor. Their earliest release date (ERD) is the SGT. In short, they are treated the same as all other prisoners who earn good time.
 2. Habitual offenders who committed their offense on or after February 4, 1978. They cannot be paroled prior to the expiration of their calendar minimum without the approval of the sentencing judge or his/her successor. Although the SGT and Regular Good Time (RGT) minimums or the Potential Minimum (PMI) and Actual Minimum (AMI) must be computed, the prisoner is not eligible for parole on either the SGT or PMI or any time prior to the calendar minimum without approval of the sentencing judge. The ERD remains the calendar minimum in the absence of such approval.
- B. The remainder of this policy directive applies only to habitual offenders in the second category, i.e., prisoners whose offenses were committed on or after February 4, 1978.

Parole and Community Residential Programs (CRP) Eligibility

- C. Approval by the sentencing court allowing the Parole Board to parole prior to the calendar minimum must be in the form of written correspondence from the court to the Board clearly indicating that jurisdiction is given to the board to approve parole prior to the calendar minimum. The Parole Board shall contact the court to clarify the issue. Language such as "I grant good time" or "I do not oppose

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good time being given" will not be interpreted as approval by the sentencing court since good time or disciplinary credits are a statutory right and not subject to judicial approval or disapproval.

- D. If the sentencing court declines to give approval for parole prior to the calendar minimum, the ERD remains the calendar minimum.
- E. If the court gives approval, the ERD shall be changed to the SGT/PMI and the Board may parole based on the new ERD. Security classification, and eligibility for reduced custody and CRP, will also be affected based upon the new ERD. Following confirmation by the Board, Central Records shall notify the Records Office of the institution where the prisoner is housed who shall then remove the calendar date from CMIS and update the habitual credit flag. The Records Office shall issue a new timeslip to reflect this change.
- F. The prisoner would then be processed for parole consideration the same as non-habitual offenders. If the SGT/PMI is past when approval is given, the prisoner shall be heard by the Board as soon as possible and, if appropriate, a CRP application should be submitted.
- G. Good time or disciplinary credits available between the SGT/PMI and the calendar minimum are available for forfeiture, restoration or not granting by the Warden whether or not approval for parole is requested by the Board or granted by the court.
- H. Staff shall instruct prisoners that they should contact their respective Program Classification committee or Classification Director, and not the sentencing court, if they believe their case warrants parole consideration prior to the calendar minimum. If supported by the classification staff and by the Warden, the case shall be referred by the Warden to the Parole Board for consideration.
- I. Preparation of Parole Eligibility Reports for habitual offenders shall be initiated based on the calendar minimum and not the SGT/PMI, unless requested earlier by the Board.

Special Parole

- J. Although non-Proposal B habitual offenders are eligible for special parole, Proposal B habitual offenders are not. That is, they cannot be paroled prior to the PMI even if the sentencing court approves.

Flat Sentence

- K. A prisoner who received a flat sentence as an habitual offender prior to September 1, 1978, shall not be considered to have an illegal sentence.

OPERATING PROCEDURES

- L. Institutions shall develop a procedure to refer appropriate cases to the Parole Board for consideration, and the Board shall develop a process to determine the position of the sentencing court where necessary.

RB:OPH:07/05/88